

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Jerry Davis, #270224,)	Civil Action No.: 3:12-1729-MGL
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
Miss Buchanan,)	
)	
Defendant.)	

Plaintiff Jerry Davis is an inmate in custody of the South Carolina Department of Corrections (SCDC). He is currently housed at the Evans Correctional Institution in Bennettsville, South Carolina. On June 27, 2012, Plaintiff proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 due to his dissatisfaction with food provided to him because there was hair in his food on May 20, 2012 and May 21, 2012. He also complains about a soft food diet and the lack of meat. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. On July 30, 2012, Magistrate Judge McCrorey issued a Report and Recommendation recommending *inter alia* that the court dismiss Plaintiff's complaint without prejudice and without service due to Plaintiff's failure to exhaust his administrative remedies.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The court may

also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made. Plaintiff was advised of his right to file objections to the Report and Recommendation. (ECF No. 10 at 7). However, he has not done so. In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is DISMISSED without prejudice and without service of process.

IT IS SO ORDERED.

s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
September 10, 2012